

Appendix B: Participant Access and Eligibility (0394)

Appendix B-1: Specification of the Waiver Target Group(s)

- a. **Target Group(s).** Under the waiver of Section 1902(a)(10)(B) of the Act, the State limits waiver services to one or more groups or subgroups of individuals. Please see the instruction manual for specifics regarding age limits. In accordance with 42 CFR §441.301(b)(6), select one or more waiver target groups, check each of the subgroups in the selected target group(s) that may receive services under the waiver, and specify the minimum and maximum (if any) age of individuals served in each subgroup:

Target Group:

Intellectual Disability or Developmental Disability, or Both

Target sub-group included:

Autism

Developmental Disability

Intellectual Disability

Minimum Age: 21

Maximum Age Limit: No

- b. **Additional Criteria.** The State further specifies its target group(s) as follows: No additional criteria.
- c. **Transition of Individuals Affected by Maximum Age Limitation.** When there is a maximum age limit that applies to individuals who may be served in the waiver, describe the transition planning procedures that are undertaken on behalf of participants affected by the age limit (select one):

☒ **Not applicable. There is no maximum age limit**

Appendix B-2: Individual Cost Limit

- a. **Individual Cost Limit.** The following individual cost limit applies when determining whether to deny home and community-based services or entrance to the waiver to an otherwise eligible individual (select one). Please note that a State may have only ONE individual cost limit for the purposes of determining eligibility for the waiver:

☒ **No Cost Limit. The State does not apply an individual cost limit.** Do not complete Item B-2-b or item B-2-c.

Answers provided in Appendix B-2-a indicate that you do not need to complete this section.

Appendix B-3: Number of Participants Served

- a. **Unduplicated Number of Participants.** The following table specifies the maximum number of unduplicated participants who are served in each year that the waiver is in effect. The State will submit a waiver amendment to CMS to modify the number of participants specified for any year(s), including when a modification is necessary due to legislative appropriation or another reason. The number of unduplicated participants specified in this table is basis for the cost-neutrality calculations in Appendix J:

Table: B-3-a

Waiver Year	Unduplicated Number of Participants
Year 1	1055
Year 2	1055
Year 3	1055
Year 4	1055
Year 5	1055

- b. **Limitation on the Number of Participants Served at Any Point in Time.** Consistent with the unduplicated number of participants specified in Item B-3-a, the State may limit to a lesser number the number of participants who will be served at any point in time during a waiver year. Indicate whether the State limits the number of participants in this way: (select one):

- ☐ The State does not limit the number of participants that it serves at any point in time during a waiver year.
- ☒ The State limits the number of participants that it serves at any point in time during a waiver year.

Table B-3-b

Waiver Year	Maximum Number of Participants Served At Any Point During the Year
Year 1	900
Year 2	900
Year 3	900
Year 4	900
Year 5	900

- c. **Reserved Waiver Capacity.** The State may reserve a portion of the participant capacity of the waiver for specified purposes (e.g., provide for the community transition of institutionalized persons or furnish waiver services to individuals experiencing a crisis) subject to CMS review and approval.

☒ The State reserves capacity for the following Purpose(s):

- 1) Emergency
- 2) Transitioning Youth from Special Education

1. Purpose - Emergency

Purpose: Capacity is reserved for emergency purposes to support individuals in immediate crisis due to caregiver death, homelessness or other situations that threaten the life and safety of the individual.

Describe how the amount of reserved capacity was determined: Reserved capacity is based on historical data and approval of funding by the Nebraska legislature.

The capacity that the State reserves in each waiver year is specified in the following table:

Waiver Year	Capacity Reserved
Year 1	5
Year 2	5
Year 3	5
Year 4	5
Year 5	5

2. Purpose (provide a title or short description to use for lookup): Transitioning Youth from Special Education services

Purpose: Capacity is reserved for Nebraska high school graduates and supports participants who, on or after September 6, 1993, graduated from Nebraska public and/or nonpublic high school transition services and have reached the age of 21. This category of reserve capacity ensures a participant is transferred seamlessly from services offered by the public school system to day and vocational services offered by the Division of Developmental Disabilities. The purpose is to transition the most vulnerable eligible young adults from the education system into the adult developmental disabilities system to prevent loss of skills and abilities and to support employment and community integration before skills become dormant.

Describe how the amount of reserved capacity was determined: Reserved capacity is based on historical data and approval of funding by the Nebraska legislature.

The capacity that the State reserves in each waiver year is specified in the following table:

Waiver Year	Capacity Reserved
Year 1	200
Year 2	200
Year 3	200
Year 4	200
Year 5	200

Scheduled Phase-In or Phase-Out. Within a waiver year, the State may make the number of participants who are served subject to a phase-in or phase-out schedule. (select one):

- ☒ The waiver is not subject to a phase-in or a phase-out schedule.
☐ The waiver is subject to a phase-in or a phase-out schedule that is included in Attachment #1 to Appendix B-3.

e. **Allocation of Waiver Capacity.** (select one)

- ☒ Waiver capacity is allocated/managed on a statewide basis.
☐ Waiver capacity is allocated to local/regional non-state entities.

f. **Selection of Entrants to the Waiver.** Specify the policies that apply to the selection of individuals for entrance to the waiver:

Persons who meet eligibility criteria as defined in Nebr. Rev. St. 83-1205 will be assessed for waiver and financial eligibility and placed on a wait list. The date used to establish a person's placement on the waiting list is the date of application from which eligibility for developmental disabilities in Nebraska was originally established. Persons remain on the waiting list until a waiver slot has been assigned to them for use, the Legislature appropriates special funds to serve a specific class of people, they withdraw from the list, or they become ineligible for the waiver.

If there is a change in a person's need they may contact the Division of Developmental Disabilities and request that an assessment of an emergency situation be completed. Persons who meet an emergency situation shall be prioritized highest on the waiting list. An emergency situation is an immediate crisis due to caregiver death, homelessness or other situations that threaten the life and safety of the individual and the emergency cannot be resolved in another way. Emergencies are defined by the following criteria:

1. Homelessness: the person does not have a place to live or is in imminent danger of losing their home and has no resources/money to secure housing.
2. Abusive or neglectful situation: the person is experiencing or is in imminent risk of physical, sexual or emotional abuse or neglect in the person's present living situation.

3. Danger to self or others: the person's behavioral challenge is such that the person is seriously injuring/harming self or others in their home, or is in imminent danger of doing so.
4. Loss of primary relative caretaker due to caretaker death or the caretaker is in need of long term services and support themselves.

Individuals who are currently receiving services in a Nebraska Intermediate Care Facility for Individuals with Developmental Disabilities (ICF/DD), for more than twelve consecutive months, who wish to and whose needs can be served in the community, do not need to be placed on the waiting list for services, but rather are assisted to transition from an ICF/DD service directly into home and community based waiver services.

Once the maximum number of unduplicated participants is reached in each waiver year, no additional participants will be enrolled.

Appendix B-4: Eligibility Groups Served in the Waiver

a. **1. State Classification.**

- ☐ §1634 State
- ☒ SSI Criteria State
- ☐ 209(b) State

2. Miller Trust State.

- ☒ No
- ☐ Yes

b. **Medicaid Eligibility Groups Served in the Waiver.** Individuals who receive services under this waiver are eligible under the following eligibility groups contained in the State plan. The State applies all applicable federal financial participation limits under the plan. Check all that apply:

Eligibility Groups Served in the Waiver (excluding the special home and community-based waiver group under 42 CFR §435.217)

- ☐ Low income families with children as provided in §1931 of the Act
- ☒ SSI recipients
- ☐ Aged, blind or disabled in 209(b) states who are eligible under 42 CFR §435.121
- ☒ Optional State supplement recipients
- ☒ Optional categorically needy aged and/or disabled individuals who have income at:
Select one:
 - ☒ 100% of the Federal poverty level (FPL)
 - ☐ % of FPL, which is lower than 100% of FPL Specify percentage: ____%
- ☒ Working individuals with disabilities who buy into Medicaid (BBA working disabled group as provided in §1902(a)(10)(A)(ii)(XIII) of the Act)

- ☐ Working individuals with disabilities who buy into Medicaid (TWWIIA Basic Coverage Group as provided in §1902(a)(10)(A)(ii)(XV) of the Act)
- ☐ Working individuals with disabilities who buy into Medicaid (TWWIIA Medical Improvement Coverage Group as provided in §1902(a)(10)(A)(ii)(XVI) of the Act)
- ☐ Disabled individuals age 18 or younger who would require an institutional level of care (TEFRA 134 eligibility group as provided in §1902(e)(3) of the Act)
- ☐ Medically needy in 209(b) States (42 CFR §435.330)
- ☒ Medically needy in 1634 States and SSI Criteria States (42 CFR §435.320, §435.322 and §435.324)
- ☒ Other specified groups (include only statutory/regulatory reference to reflect the additional groups in the State plan that may receive services under this waiver)
Specify:

Non-Magi

- SSI Recipients (435.120)
- State Supp (435.130)
- 100% FPL Group
- MIWD (435.330)
- MN (435.324)

Magi

- Pregnant Women (435.116)
- Parent/Caretaker Relative (435.110)
- Individuals who meet the income and resource requirements of the cash assistance programs (435.210)

Special home and community-based waiver group under 42 CFR §435.217)

Note: When the special home and community-based waiver group under 42 CFR §435.217 is included, Appendix B-5 must be completed

- ☐ No. the State does not furnish waiver services to individuals in the special home and community-based waiver group under 42 CFR §435.217. Appendix B-5 is not submitted.
- ☒ Yes. The State furnishes waiver services to individuals in the special home and community-based waiver group under 42 CFR §435.217. Select one and complete Appendix B-5.

☒ All individuals in the special home and community-based waiver group under 42 CFR §435.217

☐ Only the following groups of individuals in the special home and community-based waiver group under 42 CFR §435.217. Check each that applies:

- ☐ A special income level equal to:
 - ☐ 300% of the SSI Federal Benefit Rate (FBR)

- ☐ A percentage of FBR, which is lower than 300% (42 CFR §435.236) Specify percentage: _____
- ☐ A dollar amount which is lower than 300%. Specify dollar amount: _____
- ☐ Aged, blind and disabled individuals who meet requirements that are more restrictive than the SSI program (42 CFR §435.121)
- ☐ Medically needy without spenddown in States which also provide Medicaid to recipients of SSI (42 CFR §435.320, §435.322 and §435.324)
- ☐ Medically needy without spend down in 209(b) States (42 CFR §435.330)
- ☐ Aged and disabled individuals who have income at:
 - ☐ 100% of FPL
 - ☐ % of FPL, which is lower than 100%.
- ☐ Other specified groups (include only statutory/regulatory reference to reflect the additional groups in the State plan that may receive services under this waiver) Specify:

Appendix B-5: Post-Eligibility Treatment of Income (1 of 7)

In accordance with 42 CFR §441.303(e), Appendix B-5 must be completed when the State furnishes waiver services to individuals in the special home and community-based waiver group under 42 CFR §435.217, as indicated in Appendix B-4. Post-eligibility applies only to the 42 CFR §435.217 group.

- a. **Use of Spousal Impoverishment Rules.** Indicate whether spousal impoverishment rules are used to determine eligibility for the special home and community-based waiver group under 42 CFR §435.217:

Note: For the five-year period beginning January 1, 2014, the following instructions are mandatory. The following box should be checked for all waivers that furnish waiver services to the 42 CFR §435.217 group effective at any point during this time period.

☒ Spousal impoverishment rules under §1924 of the Act are used to determine the eligibility of individuals with a community spouse for the special home and community-based waiver group. In the case of a participant with a community spouse, the State uses spousal post-eligibility rules under §1924 of the Act. Complete Items B-5-e (if the selection for B-4-a-i is SSI State or §1634) or B-5-f (if the selection for B-4-a-i is 209b State) and Item B-5-g unless the state indicates that it also uses spousal post-eligibility rules for the time periods before January 1, 2014 or after December 31, 2018.

Note: The following selections apply for the time periods before January 1, 2014 or after December 31, 2018 (select one):

☒ **Spousal impoverishment rules under §1924 of the Act are used to determine the eligibility of individuals with a community spouse for the special home and**

community-based waiver group. In the case of a participant with a community spouse, the State elects to (select one):

- ☒ **Use spousal post-eligibility rules under §1924 of the Act.** (Complete Item B-5-b (SSI State) and Item B-5-d)
- ☐ **Use regular post-eligibility rules under 42 CFR §435.726 (SSI State) or under §435.735 (209b State).** (Complete Item B-5-b (SSI State). Do not complete Item B-5-d)
- ☐ **Spousal impoverishment rules under §1924 of the Act are not used to determine eligibility of individuals with a community spouse for the special home and community-based waiver group. The State uses regular post-eligibility rules for individuals with a community spouse.** (Complete Item B-5-b (SSI State). Do not complete Item B-5-d)

Appendix B-5: Post-Eligibility Treatment of Income (2 of 7)

Note: The following selections apply for the time periods before January 1, 2014 or after December 31, 2018.

b. Regular Post-Eligibility Treatment of Income: SSI State.

The State uses the post-eligibility rules at 42 CFR 435.726 for individuals who do not have a spouse or have a spouse who is not a community spouse as specified in §1924 of the Act. Payment for home and community-based waiver services is reduced by the amount remaining after deducting the following allowances and expenses from the waiver participant's income:

i. Allowance for the needs of the waiver participant (select one):

- ☒ **The following standard included under the State plan** (select one):
 - ☐ SSI Standard
 - ☐ Optional State supplement standard
 - ☐ Medically needy income standard
 - ☐ The special income level for institutionalized persons (select one):
 - ☐ 300% of the SSI Federal Benefit Rate (FBR)
 - ☐ A percentage of the FBR, which is less than 300%. Specify the percentage: _____
 - ☐ A dollar amount which is less than 300%. Specify dollar amount: _____
 - ☒ A percentage of the Federal poverty level. Specify percentage: 100 %
 - ☐ Other standard included under the State Plan. Specify: _____
- ☐ **The following dollar amount.** Specify dollar amount: _____. If this amount changes, this item will be revised.
- ☐ **The following formula is used to determine the needs allowance:** Specify: _____
- ☐ **Other**

ii. Allowance for the spouse only (select one):

☒ **Not Applicable**

☐ **The State provides an allowance for a spouse who does not meet the definition of a community spouse in §1924 of the Act. Describe the circumstances under which this allowance is provided:** Specify:

Specify the amount of the allowance (select one):

☐ SSI Standard

☐ Optional State supplement standard

☐ Medically needy income standard

☐ The following dollar amount. Specify dollar amount: _____. If this amount changes, this item will be revised.

☐ The following formula is used to determine the needs allowance: Specify:

iii. Allowance for the family (select one):

☐ **Not Applicable** (see instructions)

☐ **AFDC need standard**

☒ **Medically needy income standard**

☐ **The following dollar amount.** Specify dollar amount: _____. The amount specified cannot exceed the higher of the need standard for a family of the same size used to determine eligibility under the State's approved AFDC plan or the medically needy income standard established under 42 CFR §435.811 for a family of the same size. If this amount changes, this item will be revised.

☐ **The amount is determined using the following formula:** Specify:

☐ **Other**

iv. Amounts for incurred medical or remedial care expenses not subject to payment by a third party, specified in 42 §CFR 435.726:

a. Health insurance premiums, deductibles and co-insurance charges

b. Necessary medical or remedial care expenses recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits that the State may establish on the amounts of these expenses. Select one:

☐ **Not Applicable** (see instructions) Note: If the State protects the maximum amount for the waiver participant, not applicable must be selected.

☒ **The State does not establish reasonable limits.**

☐ **The State establishes the following reasonable limits.** Specify:

Appendix B-5: Post-Eligibility Treatment of Income (3 of 7)

Note: The following selections apply for the time periods before January 1, 2014 or after December 31, 2018.

c. **Regular Post-Eligibility Treatment of Income: 209(B) State.**

Answers provided in Appendix B-4 indicate that you do not need to complete this section and therefore this section is not visible.

Appendix B-5: Post-Eligibility Treatment of Income (4 of 7)

Note: The following selections apply for the time periods before January 1, 2014 or after December 31, 2018.

- d. **Post-Eligibility Treatment of Income Using Spousal Impoverishment Rules** The State uses the post-eligibility rules of §1924(d) of the Act (spousal impoverishment protection) to determine the contribution of a participant with a community spouse toward the cost of home and community-based care if it determines the individual's eligibility under §1924(d) of the Act. There is deducted from the participant's monthly income a personal needs allowance (as specified below), a community spouse's allowance and a family allowance as specified in the State Medicaid Plan. The State must also protect amount for incurred expenses for medical or remedial care (as specified below).

- i. Allowance for the personal needs of the waiver participant: (select one):
- ☐ SSI Standard
 - ☐ Optional State supplement standard
 - ☐ Medically needy income standard
 - ☐ The special income level for institutionalized persons
 - ☒ A percentage of the Federal poverty level. Specify percentage: 100%
 - ☐ The following dollar amount: Specify dollar amount: _____. If this Amount changes, this item will be revised.
 - ☐ The following formula is used to determine the needs allowance: Specify formula:
 - ☐ Other. Specify:
- ii. **If the allowance for the personal needs of a waiver participant with a community spouse is different from the amount used for the individual's maintenance allowance under 42 CFR §435.726 or 42 CFR §435.735, explain why this amount is reasonable to meet the individual's maintenance needs in the community.** Select one:
- ☒ Allowance is the same.
 - ☐ Allowance is different. Explanation of difference:
- iii. **Amounts for incurred medical or remedial care expenses not subject to payment by a third party, specified in 42 CFR §435.726:**
- a. Health insurance premiums, deductibles and co-insurance charges
 - b. Necessary medical or remedial care expenses recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits that the State may establish on the amounts of these expenses. Select one:
 - ☐ Not Applicable (see instructions) Note: If the State protects the maximum amount for the waiver participant, not applicable must be selected.
 - ☒ The State does not establish reasonable limits.

☐ The State used the same reasonable limits as are used for regular (non-spousal) post-eligibility.

Appendix B-5: Post-Eligibility Treatment of Income (5 of 7)

Note: The following selections apply for the five-year period beginning January 1, 2014.

e. Regular Post-Eligibility Treatment of Income: SSI State - 2014 through 2018.

Answers provided in Appendix B-5-a indicate the selections in B-5-b also apply to B-5-e.

Appendix B-5: Post-Eligibility Treatment of Income (6 of 7)

Note: The following selections apply for the five-year period beginning January 1, 2014.

f. Regular Post-Eligibility Treatment of Income: 209(B) State - 2014 through 2018.

Answers provided in Appendix B-4 indicate that you do not need to complete this section and therefore this section is not visible.

Appendix B-5: Post-Eligibility Treatment of Income (7 of 7)

Note: The following selections apply for the five-year period beginning January 1, 2014.

g. Post-Eligibility Treatment of Income Using Spousal Impoverishment Rules - 2014 through 2018.

Answers provided in Appendix B-5-a indicate the selections in B-5-d also apply to B-5-g.

Appendix B-6: Evaluation/Reevaluation of Level of Care

As specified in 42 CFR §441.302(c), the State provides for an evaluation (and periodic reevaluations) of the need for the level(s) of care specified for this waiver, when there is a reasonable indication that an individual may need such services in the near future (one month or less), but for the availability of home and community-based waiver services.

- a. **Reasonable Indication of Need for Services.** In order for an individual to be determined to need waiver services, an individual must require: (a) the provision of at least one waiver service, as documented in the service plan, and (b) the provision of waiver services at least monthly or, if the need for services is less than monthly, the participant requires regular monthly monitoring which must be documented in the service plan. Specify the State's policies concerning the reasonable indication of the need for services:

- i. Minimum number of services.

The minimum number of waiver services (one or more) that an individual must require in order to be determined to need waiver services is:

- ii. Frequency of services. The State requires (select one):

☒ The provision of waiver services at least monthly

- ☐ Monthly monitoring of the individual when services are furnished on a less than monthly basis

If the State also requires a minimum frequency for the provision of waiver services other than monthly (e.g., quarterly), specify the frequency:

The minimum frequency for the provision of the waiver service is sixty days.

- b. **Responsibility for Performing Evaluations and Reevaluations.** Level of care evaluations and reevaluations are performed (select one):

- ☐ Directly by the Medicaid agency

- c. **Qualifications of Individuals Performing Initial Evaluation:** Per 42 CFR §441.303(c)(1), specify the educational/professional qualifications of individuals who perform the initial evaluation of level of care for waiver applicants:

Disability Services Specialists (DSSs) employed by the Division of Developmental Disabilities (DDD), performing initial evaluations of individuals' level of care for initial waiver are professionals who have knowledge of 1) developmental disabilities (including but not limited to specific disabilities and criteria for meeting ICF-IDD Level of Care), child growth and development, observations, and assessments to include those that measure adaptive functioning. In order to perform initial evaluations for level of care, the DSSs are required to have a Bachelor's Degree in psychology, social work, education, public administration or a related human service field and one year experience working in the field of developmental disabilities. The following skills are required: Communicate effectively in a variety of situations; develop working relationships with individuals with DD, their families, review team members, community professionals, program directors, agency representatives, and other groups of individuals with interests in DD; analyze behavioral data and formulate habilitation plans; and plan and organize habilitative training programs, interviewing techniques, assessing skills, abilities, preferences, and needs and explaining services to individuals, families, and guardians are required. Experience in working with people with DD and knowledge of quality assurance/improvement is preferred, but is not a requirement.

They must have knowledge of current practices in the field of DD, including service coordination, program planning, disability law, medications, the theory of social role valorization, and provision of habilitation services.

The Disability Services Specialists receive quarterly in-service training on assessment(s), evaluation, level of care determination, and waiver eligibility.

- d. **Level of Care Criteria.** Fully specify the level of care criteria that are used to evaluate and reevaluate whether an individual needs services through the waiver and that serve as the basis of the State's level of care instrument/tool. Specify the level of care instrument/tool that is employed. State laws, regulations, and policies concerning level of care criteria and the level of care instrument/tool are available to CMS upon request

through the Medicaid agency or the operating agency (if applicable), including the instrument/tool utilized.

Individuals who are deemed to require ICF-IDD level of care are enrolled in and maintained on (pursuant to reevaluation) this waiver. All waiver participants must meet the criteria for a developmental disability as defined under Neb. Rev. Stat. § 83-1205: Developmental disability shall mean a severe, chronic disability, including an intellectual disability, other than mental illness, which:

- (1) Is attributable to a mental or physical impairment unless the impairment is solely attributable to a severe emotional disturbance or persistent mental illness;
- (2) Is manifested before the age of twenty-two years;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in one of each of the following areas of adaptive functioning:
 - (a) Conceptual skills, including language, literacy, money, time, number concepts, and self-direction;
 - (b) Social skills, including interpersonal skills, social responsibility, self-esteem, gullibility, wariness, social problem solving, and the ability to follow laws and rules and to avoid being victimized; and
 - (c) Practical skills, including activities of daily living, personal care, occupational skills, healthcare, mobility, and the capacity for independent living; and
- (5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

An individual from birth through the age of nine years inclusive who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the major life activities described in subdivision (4) of this section if the individual, without services and support, has a high probability of meeting those criteria later in life.

The following the level of care criteria is used to initially evaluate whether an individual needs services through the waiver:

- a. Eligibility status as defined under Neb. Rev. Stat. § 83-1205, which is verified at ages 9 and 18;
- b. Medicaid eligibility status;
- c. Service plan (Individual Support Plan - ISP);
- d. Developmental Index ICF-IDD Level of Care assessment; and
- e. Signed form for request/consent to community based services, which is the choice between home and community based waiver services and ICF-IDD services and choice of providers.

The following criteria is used to annually evaluate whether an individual needs services through the waiver:

- a. Eligibility status as defined under Neb. Rev. Stat. § 83-1205;

- b. Medicaid eligibility status;
- c. Service plan (Individual Support Plan - ISP); and
- d. Developmental Index ICF-DD Level of Care assessment.

For all waiver participants, the above criteria for a developmental disability as defined under Neb. Rev. Stat. § 83-1205 is verified at ages 9 and age 18.

- e. **Level of Care Instrument(s).** Per 42 CFR §441.303(c)(2), indicate whether the instrument/tool used to evaluate level of care for the waiver differs from the instrument/tool used to evaluate institutional level of care (select one):

- ☐ **The same instrument is used in determining the level of care for the waiver and for institutional care under the State Plan.**
- ☒ **A different instrument is used to determine the level of care for the waiver than for institutional care under the State plan.**

Describe how and why this instrument differs from the form used to evaluate institutional level of care and explain how the outcome of the determination is reliable, valid, and fully comparable.

The Developmental Index LOC assessment tool for waiver evaluation and reevaluation is comparable to the ICF/DD Utilization Review assessment tool completed for institutional ICF placement. Both tools note skills, abilities, preferences, and needs, including health needs, means of communication, and behavioral concerns. The participant and family or guardian, and their service coordinator (SC)/Community Coordinator Specialist (CCS), provider staff, or others who are familiar with the participant complete the applicable tool.

The Developmental Index, the waiver LOC assessment tool, differs from the ICF/DD Utilization Review, the ICF LOC assessment tool, by assessing skills, abilities, and areas needing improvement for maximizing independence in the community, such as job-readiness, managing personal finances, and accessing community services. The Developmental Index LOC assessment is completed on an annual basis. Although the tools are different, reliability and validity testing using a sampling methodology indicates that the outcome of the determinations yielded from the Developmental Index is similar to the outcome of determinations yielded from the assessment completed for ICF placement.

If a former waiver participant enters the State ICF for short-term intensive behavioral treatment, the LOC is determined using the ICF/DD Utilization Review assessment tool.

- f. **Process for Level of Care Evaluation/Reevaluation:** Per 42 CFR §441.303(c)(1), describe the process for evaluating waiver applicants for their need for the level of care under the waiver. If the reevaluation process differs from the evaluation process, describe the differences:

DDD requires that an initial and an annual reevaluation of waiver eligibility are conducted to access waiver services. The DSSs perform the initial waiver approval, as stated in

Section B-6 d. A determination of initial waiver eligibility is made within ten business days of the DSS receiving notification from the SC/CCS that a participant is ready for entrance to the waiver.

SCs/CCSs perform the annual waiver level of care review. The process for the annual waiver review by the SC/CCS includes a review eligibility status as defined under Neb. Rev. Stat. § 83-1205; of the Developmental Index/Level of Care Assessment; Individual Support Plan (ISP); and Medicaid eligibility status.

The Developmental Index/Level of Care Assessment is completed by the participant, their SC/CCS, provider staff, and other team members at the ISP meeting. This process allows all team members to have and provide input. Within ten business days, the annual reevaluation is completed and the participant's annual budget is approved and authorized by the Service Coordination Supervisor in accordance with policy and state and federal regulations.

As a last step, the SC/CCS provides notification of eligibility for annual waiver services to the participant and/or representative. If eligible, the participant is maintained on the waiver. If the participant is not eligible because they are not Medicaid eligible or do not meet ICF-IDD Level of Care for waiver, these participants are removed from the waiver and their waiver case is closed. Participants who are determined not eligible for waiver services receive written notification of their ineligibility via a Notice of Decision and are then eligible for a Fair Hearing under the state regulations if they believe that the eligibility determination was made in error or the Level of Care determination is not accurate.

- g. **Re-evaluation Schedule.** Per 42 CFR §441.303(c)(4), reevaluations of the level of care required by a participant are conducted no less frequently than annually according to the following schedule (select one):
- ☐ Every three months
 - ☐ Every six months
 - ☒ Every twelve months
 - ☐ Other schedule
- Specify the other schedule:
- h. **Qualifications of Individuals Who Perform Reevaluations.** Specify the qualifications of individuals who perform reevaluations (select one):
- ☐ **The qualifications of individuals who perform reevaluations are the same as individuals who perform initial evaluations.**
 - ☒ **The qualifications are different.** Specify the qualifications:

The qualifications of a SC are as follows:

1. Bachelor's Degree required in: education, psychology, social work, sociology, or human services, or a related field and experience in services or programs for persons with intellectual or other developmental disabilities.
2. Ability to: mobilize resources to meet individual needs; communicate effectively to exchange information; develop working relationships with individuals with intellectual or developmental disabilities, their families, interdisciplinary team members, agency representatives, and individuals or advocacy groups; analyze behavioral data; monitor services and supports provided; apply Department of Health and Human Services (DHHS) and program rules, policies, and procedures; and organize, evaluate and address program/operational data.
3. Knowledge of: current practices in the field of community-based services for persons with intellectual disabilities and other developmental disabilities; person-centered planning; Americans with Disability Act (ADA) standards; self-direction; community integration; the principles of social role valorization; provision of habilitation services; positive behavioral supports; and, statutes and regulations pertaining to delivery of services for individuals with developmental disabilities.
4. Knowledge of: the program resources/services available in Nebraska for persons with intellectual and other developmental disabilities; the objectives, philosophies, and functions of the Division of Developmental Disabilities (DDD); regulations governing the authorization, delivery of, and payment of community-based developmental disabilities services; Department of Education regulations; State statutes regarding persons with disabilities; and DHHS programs, such as Protection and Safety and public assistance programs.

The qualifications of a CCS are as follows:

1. Bachelor's degree and professional experience are required in: education, psychology, social work, sociology, human services, or a related field.
2. Ability to: mobilize resources to meet individual needs; communicate effectively to exchange information; develop working relationships with individuals with intellectual or developmental disabilities, their families, interdisciplinary team members, agency representatives, and individuals or advocacy groups; analyze behavioral data; monitor services and supports provided; apply Department of Health and Human Services (DHHS) and program rules, policies, and procedures; and organize, evaluate and address program/operational data.
3. Ability to: assess the needs of persons with intellectual or other developmental disabilities; evaluate assessments; determine eligibility of individuals; develop and assess individual program plans and individual family support plans; adjust services as needed; mobilize resources to meet individual needs; interact and communicate with federal surveyors, other regulatory bodies and others in person via telephone, electronically, and written correspondence to exchange information and to respond to information requests; report non-compliance to appropriate agencies; develop working relationships with individuals with intellectual or developmental disabilities, their families and guardians, interdisciplinary team members, agency representatives, and individuals or advocacy groups; analyze behavioral data; conduct formal assessments; monitor services provided;

apply agency and program rules, policies, and procedures; think critically; and, organize, prioritize, evaluate and address program/operational data.

4. Knowledge of: current practices in the field of community-based services for persons with intellectual disabilities and other services for persons with developmental disabilities; person-centered program planning; basic medical terminology; the principles of social role valorization; provision of habilitation services; and positive behavioral support techniques.
 5. Knowledge of: the program resources/services available in Nebraska for persons with intellectual and other developmental disabilities; the objectives, philosophies, and functions of the Division of Developmental Disabilities; regulations governing the authorization, delivery of, and payment of community-based developmental disabilities services; Department of Education regulations; State statutes regarding persons with disabilities; and DHHS programs, such as Protection and Safety and public assistance programs.
- i. **Procedures to Ensure Timely Reevaluations.** Per 42 CFR §441.303(c)(4), specify the procedures that the State employs to ensure timely reevaluations of level of care (specify):

The SCs/CCSs utilize the web-based case management system and the processes within it that are components of case management to ensure timely reevaluations of level of care. SC/CCS Supervisors run electronic reports to determine if reevaluations are conducted timely and review findings with SCs/CCSs at monthly supervision meetings.

- j. **Maintenance of Evaluation/Reevaluation Records.** Per 42 CFR §441.303(c)(3), the State assures that written and/or electronically retrievable documentation of all evaluations and reevaluations are maintained for a minimum period of 3 years as required in 45 CFR §92.42. Specify the location(s) where records of evaluations and reevaluations of level of care are maintained:

The state assures that written and/or electronically retrievable documentation of all evaluations for initial waiver and reevaluations for annual waiver are maintained for a minimum period of 3 years as required in 45 CFR § 92.42. Disability Service Specialists who are responsible for the level of care evaluations, initial waiver review and approval maintain an electronic record for each waiver participant. SC/CCS staff who are responsible for performing the annual waiver review also keep an electronic record for each participant. The electronic records are maintained in SharePoint and the web-based case management system permanently.

Quality Improvement: Level of Care

As a distinct component of the State's quality improvement strategy, provide information in the following fields to detail the State's methods for discovery and remediation.

- a. **Methods for Discovery: Level of Care Assurance/Sub-assurances.** The state demonstrates that it implements the processes and instrument(s) specified in its approved

waiver for evaluating/reevaluating an applicant's/waiver participant's level of care consistent with level of care provided in a hospital, NF or ICF/IID.

i. Sub-Assurances:

- a. Sub-Assurance:** An evaluation for LOC is provided to all applicants for whom there is reasonable indication that services may be needed in the future.

Performance Measures

For each performance measure the State will use to assess compliance with the statutory assurance (or sub-assurance), complete the following. Where possible, include numerator/denominator.

For each performance measure, provide information on the aggregated data that will enable the State to analyze and assess progress toward the performance measure. In this section provide information on the method by which each source of data is analyzed statistically/deductively or inductively, how themes are identified or conclusions drawn, and how recommendations are formulated, where appropriate.

Performance Measure:

Number and percent of new waiver eligible applicants for whom Intermediate Care Facility (ICF) Level of Care (LOC) was determined prior to the receipt of services. Numerator = number of new waiver eligible applicants for whom ICF LOC was determined prior to receipt of services; Denominator = number of new waiver eligible applicants.

Data Source:

☒ Record reviews, on site

Responsible Party of data collection/generation (check each that applies)	Frequency of data collection/generation (check each that applies)	Sampling Approach(check each that applies)
<input checked="" type="checkbox"/> State Medicaid Agency	<input type="checkbox"/> Weekly	<input checked="" type="checkbox"/> 100% Review
<input type="checkbox"/> Operating Agency	<input type="checkbox"/> Monthly	<input type="checkbox"/> Less than 100% Review
<input type="checkbox"/> Sub-State Entity	<input type="checkbox"/> Quarterly	<input type="checkbox"/> Representative Sample: Confidence Interval=
<input type="checkbox"/> Other (specify)	<input type="checkbox"/> Annually	<input type="checkbox"/> Stratified: Describe Group
	<input checked="" type="checkbox"/> Continuously and Ongoing	<input type="checkbox"/> Other (specify)
	<input type="checkbox"/> Other (specify)	

Data Aggregation and Analysis:

Responsible Party for data aggregation and analysis (check each that apply)	Frequency of data aggregation and analysis (check each that apply)
<input checked="" type="checkbox"/> State Medicaid Agency	<input type="checkbox"/> Weekly
<input type="checkbox"/> Operating Agency	<input checked="" type="checkbox"/> Monthly
<input type="checkbox"/> Sub-State Agency	<input checked="" type="checkbox"/> Quarterly
<input type="checkbox"/> Other (specify)	<input type="checkbox"/> Annually
	<input type="checkbox"/> Continuously and Ongoing
	<input type="checkbox"/> Other: (specify)

- b. Sub-Assurance:** The levels of care of enrolled participants are reevaluated at least annually or as specified in the approved waiver.

Performance Measure:

Number and percent of initial and annual Level of Care (LOC) determinations completed in accordance with state policies and procedures. Numerator = number of initial and annual LOC determinations completed in accordance with state policies and procedures; Denominator = number of initial and annual LOC determinations reviewed.

Data Source:

- ☒ Record reviews, on site

Responsible Party of data collection/generation (check each that applies)	Frequency of data collection/generation (check each that applies)	Sampling approach (check each that applies)
<input checked="" type="checkbox"/> State Medicaid Agency	<input type="checkbox"/> Weekly	<input type="checkbox"/> 100% Review
<input type="checkbox"/> Operating Agency	<input type="checkbox"/> Monthly	<input checked="" type="checkbox"/> Less than 100% Review
<input type="checkbox"/> Sub-State Entity	<input type="checkbox"/> Quarterly	<input checked="" type="checkbox"/> Representative Sample: Confidence Interval = 95% with +/-5% margin of error
<input type="checkbox"/> Other (specify)	<input type="checkbox"/> Annually	<input type="checkbox"/> Stratified: Describe Group
	<input checked="" type="checkbox"/> Continuously and Ongoing	<input type="checkbox"/> Other (specify)
	<input type="checkbox"/> Other (specify)	

Data Aggregation and Analysis:

Responsible Party for data aggregation and analysis (check each that apply)	Frequency of data aggregation and analysis (check each that apply)
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<input checked="" type="checkbox"/> State Medicaid Agency	<input type="checkbox"/> Weekly
<input type="checkbox"/> Operating Agency	<input type="checkbox"/> Monthly
<input type="checkbox"/> Sub-State Agency	<input checked="" type="checkbox"/> Quarterly
<input type="checkbox"/> Other (specify)	<input type="checkbox"/> Annually
	<input type="checkbox"/> Continuously and Ongoing
	<input type="checkbox"/> Other: (specify)

- c. **Sub-Assurance:** The processes and instruments described in the approved waiver are applied appropriately and according to the approved description to determine the initial participant level of care.

Performance Measure:

Number and percent of participants for whom initial or annual Level of Care (LOC) that are revised as a result of appeals. Numerator = number of LOC determinations revised as a result of appeals. Denominator = number of LOC determinations.

Data Source:

☒ Record reviews, off site

Responsible Party of data collection/generation (check each that applies)	Frequency of data collection/generation	
<input checked="" type="checkbox"/> State Medicaid Agency	<input type="checkbox"/> Weekly	<input checked="" type="checkbox"/> 100% Review
<input type="checkbox"/> Operating Agency	<input type="checkbox"/> Monthly	<input type="checkbox"/> Less than 100% Review
<input type="checkbox"/> Sub-State Entity	<input type="checkbox"/> Quarterly	<input type="checkbox"/> Representative Sample: Confidence Interval=
<input type="checkbox"/> Other (specify)	<input type="checkbox"/> Annually	<input type="checkbox"/> Stratified: Describe Group
	<input checked="" type="checkbox"/> Continuously and Ongoing	<input type="checkbox"/> Other (specify)
	<input type="checkbox"/> Other (specify)	

Data Aggregation and Analysis:

Responsible Party for data aggregation and analysis (check each that apply)	Frequency of data aggregation and analysis (check each that apply)
<input checked="" type="checkbox"/> State Medicaid Agency	<input type="checkbox"/> Weekly
<input type="checkbox"/> Operating Agency	<input type="checkbox"/> Monthly
<input type="checkbox"/> Sub-State Agency	<input checked="" type="checkbox"/> Quarterly
<input type="checkbox"/> Other (specify)	<input type="checkbox"/> Annually
	<input type="checkbox"/> Continuously and Ongoing
	<input type="checkbox"/> Other: (specify)

- ii. If applicable, in the textbox below provide any necessary additional information on the strategies employed by the State to discover/identify problems/issues within the waiver program, including frequency and parties responsible.

Annual reevaluation of waiver eligibility is completed for all (100%) waiver participants. Completion of the Developmental Index LOC assessment is completed during the participant's annual ISP meeting and documented in the ISP. Quarterly reviews for renewals are conducted by Service Coordination Supervisors. Additionally, DDD Central Office Program Accuracy Specialists will conduct annual off-site file reviews to verify the work of the Disability Service Specialists and Service Coordinator Supervisors. The percentage of off-site and on-site file reviews will be included in the State's internal HCBS Waiver quality improvement off-site and on-site review processes. Those processes will be reviewed annually to ensure the combined percentage of files reviewed represents a sample size that has a confidence level of 95% with a +/- 5% margin of error. The Raosoft calculator at <http://www.raosoft.com/samplesize.html> will be used annually to validate the sample size.

b. Methods for Remediation/Fixing Individual Problems

- i. Describe the State's method for addressing individual problems as they are discovered. Include information regarding responsible parties and GENERAL methods of problem correction. In addition, provide information on the methods used by the State to document these items.

The state monitors level of care (LOC) evaluations and reevaluations, and takes action to address individual problems that are discovered, which may include failure to complete LOC evaluations/reevaluations, failure to follow established timelines, inaccurate determinations, and missing or incomplete documentation.

The disability services specialists' (DSS) Supervisor evaluates the performance of the DSS staff, utilizing the electronic quality assurance data for identification of technical assistance/training needs for individual and/or all DSSs, as well as for identification of systems changes. Given that each initial eligibility determination is vetted by the DSS Supervisor prior to a final decision being made, quality assurance review is continuous and ongoing at the 100% threshold.

Monthly quality assurance reports are reviewed at both the field office and central office levels to ensure continued Medicaid and waiver eligibility for participants. The monthly quality assurance reports are electronically generated for access by DDD staff. DSSs, SC/CCSs, and Supervisors review reports for their caseload and take appropriate action as needed on individual cases. Examples of such action may be assisting the staff person with recertification of Medicaid, correcting a

service authorization to change or end waiver services, completing a LOC assessment, etc.

ii. Remediation Data Aggregation

Remediation-related Data Aggregation and Analysis (including trend identification):

Responsible Party for data aggregation and analysis (check each that apply)	Frequency of data aggregation and analysis (check each that apply)
<input checked="" type="checkbox"/> State Medicaid Agency	<input type="checkbox"/> Weekly
<input type="checkbox"/> Operating Agency	<input type="checkbox"/> Monthly
<input type="checkbox"/> Sub-State Agency	<input type="checkbox"/> Quarterly
<input type="checkbox"/> Other (specify)	<input type="checkbox"/> Annually
	<input checked="" type="checkbox"/> Continuously and Ongoing
	<input type="checkbox"/> Other: (specify)

- c. **Timelines:** When the State does not have all elements of the Quality Improvement Strategy in place, provide timelines to design methods for discovery and remediation related to the assurance of Level of Care that are currently non-operational. **No**

Appendix B-7: Freedom of Choice

Freedom of Choice. As provided in 42 CFR §441.302(d), when an individual is determined to be likely to require a level of care for this waiver, the individual or his or her legal representative is:

- i. Informed of any feasible alternatives under the waiver; and
 - ii. Given the choice of either institutional or home and community-based services.
- a. **Procedures.** Specify the State's procedures for informing eligible individuals (or their legal representatives) of the feasible alternatives available under the waiver and allowing these individuals to choose either institutional or waiver services. Identify the form(s) that are employed to document freedom of choice. The form or forms are available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

Nebraska waiver participants are afforded choice among waiver services as well as between waiver services and institutional care and this information is provided by the participant's Service Coordinator or Community Coordinator Specialist. Information about Nebraska's DD waiver services, feasible alternatives, and freedom of choice is provided verbally and in written materials to assist the individual or legal representative in understanding waiver services, funding of his/her services, and the roles and responsibilities of the participants (the individual, family, guardian, DHHS staff, etc.). Choice of ICF or waiver services is documented on Form DDD-1. Form DDD-1 explains the right and process to appeal.

A signature for consent, documenting that waiver participant's choice is to receive community based waiver services over services in an institutional setting, is obtained upon initial determination of waiver eligibility and is kept in the participant's electronic waiver

file. If guardianship or legal status changes, service coordination must obtain a new, signed consent (for example, a child whose parent had previously consented becomes an adult or an adult's legal guardianship is transferred to another person).

- b. **Maintenance of Forms.** Per 45 CFR §92.42, written copies or electronically retrievable facsimiles of Freedom of Choice forms are maintained for a minimum of three years. Specify the locations where copies of these forms are maintained.

Form DDD-1, the waiver consent form, is kept in the participant's waiver file maintained by the Disability Services Specialist. The records are maintained permanently in electronic files by Division staff.

Appendix B-8: Access to Services by Limited English Proficiency Persons

Access to Services by Limited English Proficient Persons. Specify the methods that the State uses to provide meaningful access to the waiver by Limited English Proficient persons in accordance with the Department of Health and Human Services "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (68 FR 47311 - August 8, 2003):

The following methods are utilized to provide meaningful access to services by individuals with limited English proficiency at entrance to waiver services and on an ongoing basis;

- Oral language assistance services such as interpreters;
- Spanish translation of written materials, such as applications, brochures, due process, and the Notice of Decision;
- Spanish language placards, posters, etc.;
- Second language hiring qualifications;
- Availability of translators, including sign language;
- AT&T statewide language line; and
- Spanish language web sites.

Based on a published table of Estimate of at Least Top 15 Languages Spoken by Individuals with Limited English Proficiency (LEP) for the 50 States, the District of Columbia, Puerto Rico and each U.S. Territory from the U.S. Department of Health and Human Services, Office for Civil Rights, August 2016, Spanish is the prevalent non-English language in Nebraska. When the primary language is not English or Spanish, the state provides timely and accurate language assistance services, such as oral interpretation, and written translation when written translation is a reasonable step to provide meaningful access to an individual with LEP.